fact, a gift *mortis causa* has been held valid although the donor died of another disease than the one he feared. *Ridden* v. *Thrall*, 125 N. Y. 572, 26 N. E. 627. It would seem therefore that the gift should have been sustained in the principal case. Consumptives are proverbially optimistic, and the fact that a man takes steps to cure a serious disease does not mean he has no realization of his danger.

Habeas Corpus — Jurisdiction to Issue Writ after Commitment by another Federal Court under Federal Statute Alleged to be Unconstitutional. — A witness called by a committee of the House of Representatives, authorized to investigate financial conditions as a preliminary to legislation and to examine witnesses for that purpose, refused to answer certain questions put to him by the committee. He was thereupon indicted in the District of Columbia for contempt under U. S. Rev. Stat., §§ 101–104, arrested in New York, and held for removal. He then applied for a writ of *habeas corpus* on the ground that Congress had no power under the Constitution to compel a citizen to give such testimony. *Held*, that the writ be discharged. *Henry* v. *Henkel*, 235 U. S. 219.

Habeas corpus proceedings present the issue whether the prisoner is unlawfully restrained of his liberty. U. S. Rev. Stat., § 752. But the general rule is that on such applications, the federal courts will not determine controverted questions of law or fact, but will leave the prisoner to prove his right to liberty in the trial court, and if unsuccessful there, to prosecute his claim by writ of error. See *Ex parte Royall*, 117 U. S. 241, 251. In certain exceptional cases, as where the issuance of the writ is necessary to protect the federal government in the execution of its functions, the court will inquire fully into the questions of law and fact involved, and make a summary order. *In re Neagle*, 135 U. S. 1. And in any case, an immediate writ would issue if it appeared that there was no provision of the common law or of any statute making the act charged an offense. See *Greene* v. *Henkel*, 183 U. S. 249, 261. But where, as in the principal case, an indictment makes a *primâ facie* case, the court will confine itself to a determination of the other tribunal's authority over such a case as this appears to be on its face, and will not inquire into the constitutionality of the statute supporting the indictment, or the sufficiency of the charge. *Matter of Gregory*, 219 U. S. 210. The application of this general rule to the principal case made it unnecessary for the court to pass upon the interesting and long-mooted question of the power of Congress to compel witnesses to give testimony to be used as a basis for legislation.

Interstate Commerce — Control by States — Right of Foreign Corporation to Enforce in State Courts Contracts arising in Interstate Commerce. — A foreign corporation sued in a state court to recover the price of goods shipped to a resident of the state in compliance with an order given to its traveling salesman. A state statute which denied the right to sue in the state courts to any foreign corporation which had not appointed a resident agent and filed certain reports, was construed by the state court to apply to this transaction. *Held*, that, so construed, the statute is an unconstitutional restraint upon interstate commerce. *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197.

A statute of the same general nature being in force, a foreign corporation sued to collect a debt which arose from a similar sale. *Held*, that the statute does not apply to suits arising from interstate commerce. *American Art Works* v. *Chicago Picture Frame Works*, 264 Ill. 610, 106 N. E. 440.

The first case settles a previous conflict of authority by applying to these statutes the principle that a state may not, in exercising its right to impose conditions upon the admission of foreign corporations, thereby hamper inter-

state commerce. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489. See *Paul* v. *Virginia*, 8 Wall. (U. S.) 168, 182. Generally the courts have avoided this problem by holding, as does the second case, that the law in question applies only to suits arising from intrastate business. *Mearshon & Co.* v. *Pottsville Lumber Co.*, 187 Pa. 12, 40 Atl. 1019. Even when construed as in the first case, the statute has been sometimes considered valid. *Wilson-Moline Buggy Co.* v. *Hawkins*, 80 Kan. 117, 101 Pac. 1009. But the rule established by the first principal case has been adopted by several other courts, and seems plainly sound. *Bateman* v. *Western Star Milling Co.*, 1 Tex. Civ. App. 90, 20 S. W. 931; *Murphy Varnish Co.* v. *Connell*, 10 N. Y. Misc. 553, 32 N. Y. Supp. 492. As to the general right to do interstate commerce, it is settled that such restrictions as were here imposed are invalid. *International Textbook Co.* v. *Pigg*, 217 U. S. 91. To put similar conditions precedent on the right to sue in the state courts indirectly hampers interstate commerce, by shutting off the foreign corporation from the normal mode of enforcing its rights against those with whom it deals. It is no more legitimate to require a choice between this hardship and the expense of complying with the law than to demand absolute obedience to the conditions of the statute. See 23 HARV. L. REV. 66.

INTERSTATE COMMERCE — CONTROL BY STATES — STATE TAX ON INTERSTATE C. O. D. SHIPMENTS OF INTOXICATING LIQUORS: WEBB-KENYON ACT. — A state statute imposed an occupation tax of five thousand dollars on each place maintained for handling liquors C. O. D. TEXAS, LAWS OF 1907, c. 4. The defendant pleads this statute as a defense to a refusal to deliver an interstate C. O. D. shipment of liquors made by the plaintiff. *Held*, that the statute is constitutional. *Rosenberger* v. *Pacific Express Co.*, 167 S. W. 429 (Mo.).

The holding of the principal case, that collections on interstate C. O. D. shipments are not part of interstate commerce, seems unsound, for the commerce clause of the Constitution has been broadly construed to include all dealings intimately related to the importation of goods or passengers from one state to another. *Butler Bros. Shoe Co.* v. *United States Rubber Co.*, 156 Fed. 1. Thus a license tax on firms shipping goods into the state C. O. D. has been held an unconstitutional regulation of interstate commerce. *Norfolk & Western Ry. Co.* v. *Sims*, 191 U. S. 441. For the same reason a state statute prohibiting the delivery of any C. O. D. shipment of intoxicating liquors is unconstitutional. *Adams Express Co.* v. *Kentucky*, 206 U. S. 129. The tax imposed in the present case was so high as to amount to a prohibition of such shipments of liquors into the state, and seems clearly unconstitutional unless aided by the so-called Webb-Kenyon Act, to which the court did not refer. *Louisville & Nashville R. Co.* v. *Cook Brewing Co.*, 223 U. S. 70. In substance, this statute prohibits interstate shipments of liquor intended to be used in violation of the law of the state of destination. 37 U. S. STAT. AT LARGE, 699. See 27 HARV. L. REV. 763. Various constructions have been put on this act by the state courts, but the better view seems to be that it makes interstate shipments illegal only where there is an intent to use the liquors for a purpose unlawful by virtue of a state statute valid as an exercise of the police power independent of this act. *Southern Express Co.* v. *State*, 66 So. 115 (Ala.); *Palmer* v. *Southern Express Co.*, 165 S. W. 236 (Tenn.); *contra*, *Adams Express Co.* v. *Beer*, 65 So. 575 (Miss.). See 28 HARV. L. REV. 225. Accordingly, under this view, the federal law would not cure the unconstitutionality of the present statute.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — COVENANT TO REPAIR — RIGHT OF THIRD PARTY UNDER COVENANT. — The defendant leased a certain dwelling house to a tenant with a covenant to keep